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The Honorable James L. Robart

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

LESLIE JACK, Individually and as Personal
Representative of the ESTATE OF PATRICK
JACK; and DAVID JACK,

Plaintiffs,

vs.

ASBESTOS CORPORATION LTD., et al.,

Defendants.

CASE NO. 2:17-cv-00537-JLR

DEFENDANT BORGWARNER
MORSE TEC, LLC'S TRIAL BRIEF
RE APPLICATION OF THE
WASHINGTON PRODUCTS
LIABILITY ACT (WPLA)

This brief re: application of the Washington Products Liability Act is submitted` on behalf of Defendant BorgWarner Morse TEC, LLC ("BWMT").

Products liability cases are governed by the Washington Products Liability Act, Ch. 7.72 RCW (WPLA). The WPLA was enacted as part of the Tort Reform Act of 1981 and applies to all product liability claims "arising on or after July 26, 1981." RCW 4.22.920(1). The WPLA supplants common law claims or actions. *Fagg v. Bartells Asbestos Settlement Trust*, 184 Wn. App. 804, 812, 339 P.3d 207 (2014). Whether the WPLA or common law is

1 applied depends on when the injury-occurring event took place, not when a disease manifests
2 or is diagnosed. *Viereck v. Fibreboard Corp.*, 81 Wn. App. 579, 585, 915 P.2d 581 (1996).

3 When a plaintiff's alleged exposure to injury-causing products spans a prolonged time,
4 and it appears that substantially all of the injury-producing events occurred prior to the
5 adoption of the 1981 Act, the 1981 Act does not apply. *Krivanek v. Fibreboard Corp.*, 72
6 Wn. App. 632, 635, 865 P.2d 527 (1993). Conversely, the WPLA applies *unless* plaintiff
7 demonstrates that substantially all of the claimed exposures occurred before the WPLA's
8 effective date. *Fagg*, 184 Wn. App. at 812-13; *Macias v. Saberhagen*, 175 Wn.2d 402,
9 408,282 P.3d 1069 (2012). Washington courts have defined "substantially all" to mean 85
10 percent or more. *Fagg*, 184 Wn. App. at 813. The application of the WPLA or common law
is defendant specific. *See Saberhagen*, 175 Wn.2d at 409, n. 2 (reviewing the record of
asbestos exposure as to each defendant to determine whether the 1981 law applies); *see also*
11 *Fagg*, 184 Wn. App. 804, 814-15 (2014).

12 Here, Plaintiffs allege that Mr. Jack was exposed to asbestos containing BorgWarner
13 clutch discs from the mid-1950s until 2007. Dkt. #613 (Plaintiff's Response to BWMT's
14 Motion for Summary Judgment) at 1-4. Although BorgWarner disputes the vast majority of
15 these exposures, Plaintiffs' allegations make clear that many of these alleged exposures relate
to Mr. Jack's "own vehicles in the 1980s and 1990s." *Id.* at 1. Indeed, Plaintiffs assert that
"there were 'lots' of [vehicles he performed clutch work] on throughout his life[.]" *Id.* at 4.

16 BorgWarner sought summary judgment dismissal because Plaintiffs failed to provide
17 adequate specific testimony regarding Decedent's clutch work. This motion was denied, in
18 part, as a consequence that the Decedent identified performing "lots" of clutch work and that
19 Plaintiffs alleged that BorgWarner sold asbestos-containing clutches into the 1980s. *See* Dkt.
20 #706 (Court's Order on Motions for Summary Judgment) at 43. Because Plaintiffs do not
allege, and cannot show, that 85% of Mr. Jack's clutch disc work took place prior to 1981, the
WPLA applies to Plaintiffs' claims against BorgWarner.

1 RESPECTUFLY SUBMITTED this 21st day of September, 2018.

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